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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,594	10/08/1999	ROBERT K. ROWE	1023.1110101	5039

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EXAMINER

WERNER, BRIAN P

ART UNIT PAPER NUMBER

2621

DATE MAILED: 09/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/415,594	ROWE ET AL.	
	Examiner	Art Unit	
	Brian P. Werner	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely-filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2002 and 29 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Response to Amendment

1. The amendment received on June 28, 2002 has been entered. Claims 1-23 remain pending.

Drawings

2. The new drawings were received on July 29, 2002. These drawings are acceptable. The previous drawing objections are withdrawn.

Information Disclosure Statement and Inventorship

3. The examiner acknowledges applicant's statements regarding information disclosure and inventorship (i.e., response page 8).
4. The information disclosure statement filed January 14, 2000 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

5. The previous objections advanced at paragraphs 4-6 of the Office Action are withdrawn.

Claim Rejections - 35 USC § 112

6. The previous rejections advanced at paragraphs 7-10 of the Office Action are withdrawn, with one exception. Claim 23 remains rejected due to the use of term "about". The rejection is repeated immediately below, and the examiner responds to applicant's arguments in the Response to Arguments paragraph below.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 23 requires an "index-matching medium" that has a "refractive index between about 1.30 and about 1.45". The terms "about" render this claim indefinite, because the degree of variation afforded by the term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. In addition, the entire claimed range of 1.30 to 1.45 is not founded in the specification as described in the objection above. Therefore, how would one know the scope of the range of about 1.30 to about 1.45? Clarification is required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1, 2, 5, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ott (US Re. 29,008). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

11. Claims 1, 2, 5-8 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Prokoski et al. (US 5,163,094 A). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

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12. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoianov et al. (US 5,761,330 A). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

13. Claims 1, 10, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Toyoda et al. (US 5,999,637 A). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 12, 13 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Messerschmidt (US 5,655,530 A), Robinson et al. (US 4,975,581 A – INCORPORATED BY REFERENCE IN MESSERSCHMIDT at Messerschmidt column 2, line 50; i.e., “The disclosure of Robinson et al. is incorporated herein by reference”), and Peterson et al. (US 6,330,346 B1). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

16. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ott (US Re. 29,008) in view of Dolfing (US 6,317,507 B1). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

17. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Messerschmidt (US 5,655,530 A), Robinson et al. (US 4,975,581A – INCORPORATED BY REFERENCE IN MESSERSCHMIDT at Messerschmidt column 2, line 50; i.e., “The disclosure of Robinson et al. is incorporated herein by reference”), and Peterson et al. (US 6,330,346 B1) as applied to claim 19 above, and further in view of Hoshino et al. (US 4,944,021). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

18. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Prokoski et al. (US 5,163,094) and Hoshino et al. (US 4,944,021). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

19. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Ott (US Re. 29,008) and Itsumi et al. (US 5,559,504). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

20. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Messerschmidt (US 5,655,530 A), Robinson et al. (US 4,975,581A – INCORPORATED BY REFERENCE IN MESSERSCHMIDT at Messerschmidt column 2, line 50; i.e., “The disclosure of Robinson et al. is incorporated herein by reference”), Peterson et al. (US 6,330,346 B1) and Hoshino et al. (US 4,944,021) as applied to claims 14-17 above, and further in view of Toyoda et al. (US 5,999,637 A). The rejection advanced in the previous Office Action is incorporated herein by reference; the details of which will not be repeated.

Response to Arguments

21. The objections and rejection that have been withdrawn above are responsive to the examiner's careful consideration of applicant's arguments.

22. Applicant's arguments filed with the amendment on June 28, 2002 have been fully considered but they are not persuasive.

35 U.S.C. 112 Rejection – the term “about”

Applicant directs the examiner to MPEP 2173.05(b)A and asserts that the term “about” is “clear but flexible” (i.e., response page 12). The examiner disagrees for the following reason. MPEP 2173.05(b)A requires information in the prosecution history, the specification or the prior art that defines what range of activity is covered by the term “about”. In the case of claim 23, which recites an “index-matching medium” that has a

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“refractive index between about 1.30 and about 1.45”, while the prior art Robinson et al. (incorporated by reference, and discussed by applicant at response page 9, first line) discloses a fixed range of “1.30 - 1.45”, Robinson does not describe the metes and bounds of a range that it “about” 1.30 – 1.45. Likewise, applicant does not discuss the metes and bounds of “about” 1.30 – 1.45 in the specification, or the response. The same questions posed by the examiner in the previous Office Action, which remain unanswered, still apply. In addition, the examiner would like to pose the following questions regarding this range: Which of the following indexes of refraction fall within the range of “about” 1.30 – 1.45: 1.0, 1.1, 1.2, 1.25, 1.275, 1.28, 1.29, 1.29599, 1.4563, 1.46, 1.475, 1.5, 1.6, 1.9, 4.5? **A response to this question is respectfully solicited as it may help to clarify the metes and bounds of the limitation.**

35 U.S.C. 102 Rejection – the Ott reference

Note: Applicant does not direct the arguments to any specific claim. Thus, the Ott reference will be addressed as it applies to independent claim 1.

Applicant states that “the claimed methods and apparatus of the present application are based on the optical characteristics of skin and other tissues” and “for at least these reasons, this reference {Ott} does not anticipate the claimed invention” at response page 13. In response, it is noted that independent claim 1 does not require “optical characteristics” or “characteristics of skin”. Claim 1 only requires, broadly, “obtaining target tissue spectral data” from an individual. The claim does not require electromagnetic energy to be utilized, the claim does not preclude methods of obtaining

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tissue spectra other than optical methods, and the claim does not require the obtaining of spectral data from "skin". Regarding the claimed term "tissue", the Webster's II New Riverside University Dictionary (1994) defines the biological sense of "tissue" as "an aggregation of morphologically and functionally similar cells." It is noted that the claim does not include, or preclude any particular type of "tissue". Given that dependent claims further limit both the type of energy applied to the body, and the type of tissue examined, this is even further evidence that independent claim 1 is broader in scope than any particular type of energy or tissue.

The Ott reference applies "sonic" energy to the body (i.e., Ott, column 3, line 8) in order obtain tissue spectral data, and such "sonic" energy is by no means precluded by the claim as described above. The Ott reference applies "sinusoidal-wave energy to he body of a person" at column 2, line 30. Given that the body is made up of tissue, the limitation of "tissue" is fully met by Ott. Even considering applicant's remark (i.e., response page 12) that Ott applies sonic energy to "a part of the body such as a bone", the examiner would like to note that a "bone" meets the definition of "tissue" as advanced above, and that Ott does not sever the skin of the person in order to measure the spectral data. Therefore, the sonic energy of Ott must travel through the skin, muscle and other connective tissue in order to be measured and these tissue most certainly contribute to the spectral data that is ultimately measured.

While the examiner understands that Ott does not disclose the same invention as applicant's "disclosed" invention, the examiner contends that Ott

meets the broadly recited requirements of at least independent claim 1 for the reasons above.

35 U.S.C. 102 Rejection – the Prokoski reference

Note: Applicant does not direct the arguments to any specific claim. Thus, the Prokoski reference will be addressed as it applies to independent claim 1.

Applicant states that “the method and apparatuses taught by Prokoski do not incorporate or rely on any feature that measures the infrared light at multiple different wavelengths” and as such “are monochromatic, image-based means for identifying people based on external features.

In response, it is noted that independent claim requires the spectral data to have “a plurality of measurement wavelengths”. The claim does not require any specific number of wavelengths, and a “plurality” is interpreted as two (2) or more. The claim also does not require any particular wavelengths, and does not preclude any particular wavelengths. Prokoski measures wavelengths in the “3-6 or 8-14 micron ranges” at column 4, line 52. It can be seen from figure 4, and its corresponding description in the Prokoski reference, that a plurality of wavelengths are measured. Prokoski is not monochromatic. The definition of monochromatic is radiation of only one wavelength (e.g., monochromatic light). Figure 4 depicts a “thermal image” (i.e., Prokoski, column 5, line 39) that is captured by Prokoski, and a thermal image is not “monochromatic”. A thermal image is composed of a plurality of wavelengths of light, such as those of the aforementioned wavelength range disclosed by Prokoski. The examiner has a five year

history as a design engineer for the U.S. Army in the field of night vision and electro-optics, and hereby certifies that a thermal image is an image depicting the measurement of a plurality of infrared wavelengths (infrared radiation *is* heat).

Regarding applicant's remark that Prokoski identifies people "based on external features", it is noted that the measurement of external features is not precluded by at least claim 1. As evidence, dependent claim 13 is pointed to which requires measurements from "subcutaneous blood". Thus, independent claim 1, which does not recite this feature, is broader than "subcutaneous" measurements.

Applicant points to disclosed, but unclaimed features at the bottom of response page 13. These features (e.g., "diffusely reflected from the inner dermis ...", etc.) are not claimed in at least claim 1, and thus not required of the Prokoski reference.

While the examiner understands that Prokoski does not disclose the same invention as applicant's "disclosed" invention, the examiner contends that Prokoski meets the broadly recited requirements of at least independent claims 1 and 14 for the reasons above.

35 U.S.C. 102 Rejection – the Stoianov reference

Note: Applicant does not direct the arguments to any specific claim. Thus, the Stoianov reference will be addressed as it applies to independent claim 1.

Applicant states that Stoianov measures "spatial frequencies" of a "fingerprint" and that "the claimed methods and apparatuses of the present invention are based on the measurement of the optical properties of tissue measured at a plurality of

wavelengths” at response page 14. First, as described above, it is noted that independent claim 1 does not require “optical” measurement, the claim does not preclude any type of “tissue”. The claim only requires a “plurality of wavelengths” without defining any particular wavelengths or ranges, and the claim does not preclude the measurement of external tissue. Stoianov measures a plurality of spatial wavelengths of human skin (i.e., a fingerprint) as described by applicant, and this fully anticipates the claimed requirements of at least claim 1.

While the examiner understands that Stoianov does not disclose the same invention as applicant’s “disclosed” invention, the examiner contends that Stoianov meets the broadly recited requirements of at least independent claim 1 for the reasons above.

35 U.S.C. 102 Rejection – the Toyoda et al. reference

Note: Applicant does not direct the arguments to any specific claim. Thus, the Toyoda reference will be addressed as it applies to independent claim 1.

Applicant advances arguments similar to those related to Stoianov, and the examiner’s response is the same. Applicant states that Toyoda measures the “spatial frequencies” of a “fingerprint”, and that “the claimed methods and apparatuses of the present invention are based on the measurement of the optical properties of tissue measured at a plurality of wavelengths” at response page 15. Again, it is noted that independent claim 1 does not require “optical” measurement, the claim does not preclude any type of “tissue”. The claim only requires a “plurality of wavelengths”

without defining any particular wavelengths or ranges, and the claim does not preclude the measurement of external tissue. Toyoda measures a plurality of spatial wavelengths of human skin (i.e., a fingerprint) as described by applicant, and this fully anticipates the claimed requirements of at least claim 1.

Applicant asserts that Toyoda does “not mention multiple wavelengths” at response page 15. In response, the examiner points to figure 5(b), where a Fourier spectrum of a fingerprint image is measured. A Fourier spectrum identifies the frequency components of the image, their magnitudes and their phases. Thus, given that a fingerprint image is composed of a plurality of spatial frequencies, and those frequencies are obtained by Toyoda, the limitations of at least claims 1 and 14 are met by Toyoda.

While the examiner understands that Toyoda does not disclose the same invention as applicant’s “disclosed” invention, the examiner contends that Toyoda meets the broadly recited requirements of at least independent claims 1 and 14 for the reasons above.

Summary of the 35 U.S.C. 102 Rejections

The above, disparate references were applied to the claims in order to exemplify the breadth of the claims. **Again, and in summary, the scope of claim 1 (and other claims) does not preclude the following: The claim does not require “optical” measurement, the claim does not preclude any type of “tissue”, the claim only requires a “plurality of wavelengths” without defining any particular wavelengths**

or ranges, and the claim does not preclude the measurement of external tissue. The fact that the dependent claims are further limiting by requiring specific optical measurement, specific wavelength ranges, subcutaneous measurement, etc. is solid evidence of this. Applicant has alluded to this in at response page 9, where it is stated that “features which are merely preferred are not to be considered critical”, and “that limiting an applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts”. These statement were responsive to the examiner’s assertion that an index matching medium, which is claimed in the depend claims but not in the independent (and other) claims, is critical. In essence, the applicant is stating that the independent claim should not be limited by preferred feature that is presented in a dependent claim, and that other acquisition methods are covered by the claim that do not include an index matching medium. The examiner agreed with applicant’s arguments, and the rejections were withdrawn above. Therefore, the same holds true for the features mentioned above. That is, at least claim 1 is broader in scope than optical inspection, subcutaneous measurement, particular wavelengths, particular energy type measured, particular tissue measured, etc. all of which are further limited by the dependent claims.

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35 U.S.C. 103 Rejection – Messerschmidt, Robinsion and Peterson combination

Note: Applicant does not direct the arguments to any specific claim. Thus, the above combination will be addressed as it applies to independent claim 1.

Applicant describes the Messerschmidt and Peterson references individually, and then compares them to the “present claims” individually at response pages 15 and 16. In response, it is noted that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding the combination, applicant attacks the motivation at response pages 16 and 17. Applicant states, “this requisite motivation to combine the references is not present in the cited references” and the “requisite expectation of success to combine the references is not present” (i.e., bottom of response page 16).

Regarding the motivation and expectation of success, a brief review of the combination would be helpful. Messerschmidt discloses a system for the subcutaneous measurement of tissue spectra, exactly in the manner claimed and disclosed by the applicant. Messerschmidt does not teach is the use of these measurements for purposes of identifying an individual (e.g., “positively verifying said target individual” at line 7 of claim 1). Peterson teaches a system for identifying an individual based on the measurement of tissue spectra, in a manner very similar to that of Messerschmidt. In fact, Peterson teaches “detecting the subcutaneous conditions and/or structure of a living organism” (Peterson, column 1, line 13) by measuring reflected infrared light using

a "light-emitting source" and "light-detection element" (Peterson, column 2, line 8) operating in the "720-750 nanometers ... 850-1000 nanometers" wavelength ranges (Peterson, column 3, line 16). In the rejection, the examiner advanced the proposition that it would have been obvious to one of ordinary skill in the art to utilize the subcutaneous measurement system disclosed by Messerschmidt, for the purposes of verifying the identity of a target individual as taught by Peterson, in order to (quote from the previous Office Action, paragraph 17):

"provide Messerschmidt with the additional, and beneficial function of "reliably" detecting the identity of an individual using a method that is "not easily tampered with" (Peterson, column 1, lines 38-39), is inexpensive (Peterson, column 1, line 42) and "can be used or readily placed in a large variety of structures without a great deal of physical alteration" (Peterson, column 1, line 45). Likewise, the reverse of the above combination would have also been obvious. That is, it would have been obvious to utilize the subcutaneous measurement system of Messerschmidt, in order to measure the "subcutaneous conditions and/or structures of a living organism" as required by Peterson (i.e., column 1, line 12), in order to provide an "improved optical interface between a sensor probe and a skin surface or tissue surface of the body containing the tissue to be analyzed" (Messerschmidt, column 5, line 53) which uses an "index matching medium [that] increases the repeatability and accuracy of the measuring procedure" (Messerschmidt, column 8, line 16)."

Not only did the examiner address a modification of Messerschmidt according to the teaching of Peterson, but the examiner also addressed a modification of Peterson according to the teaching of Messerschmidt. The motivation was quoted directly from the references themselves, even though this is not required. This type of motivation (i.e., from the references themselves) is the most powerful, and compelling. For example, it would have been obvious to utilize the subcutaneous measurement system

of Messerschmidt, in order to measure the "subcutaneous conditions and/or structures of a living organism" as required by Peterson (i.e., column 1, line 12), in order to provide an "improved optical interface between a sensor probe and a skin surface or tissue surface of the body containing the tissue to be analyzed" (Messerschmidt, column 5, line 53) which uses an "index matching medium [that] increases the repeatability and accuracy of the measuring procedure" (Messerschmidt, column 8, line 16). **Not only do the references address the same, very specific field of endeavor of subcutaneous measurement using optical wavelengths, the motivation for utilizing the Messerschmidt method is taken directly from Messerschmidt. Regarding an expectation of success, there is no reason to believe, and there has been no evidence submitted by the applicant, that utilizing Messerschmidt's system of measurement would not be fully successful when combined with Peterson's requirement for the same type of measurement. In fact, Messerschmidt even describes how his method is superior to many prior art methods (e.g., "increases the repeatability and accuracy of the measuring procedure" at Messerschmidt, column 8, line 16). Success of this combination is fully expected. In addition, it is noted that references are never literally combined; for if they were, very few**

103 rejections would ever be upheld, or even advanced by the Office. It is "teachings" that are combined, and the success of such teachings is analyzed with respect to the level of skill in the art and in this case, the level of skill is as high as it gets.

Remainder of the 35 U.S.C. 103 Rejections

Applicant argues that Dolfig fails to remedy the shortcomings of Ott, Hoshino fails to remedy the shortcomings of Messerschmidt, Robinson and Peterson, Hoshino fails to remedy the shortcomings of Prokoski, Itsumi fails to remedy the shortcomings of Ott, and Toyoda fails to remedy the shortcomings of Messerschmidt, Robinson, Peterson and Hoshino. In response, neither Ott, Messerschmidt, Robinson, Peterson nor Prokoski have any shortcomings as described by the examiner above.

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Werner whose telephone number is 703-306-3037. The examiner can normally be reached on M-F, 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo H. Boudreau can be reached on 703-305-4706. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

Brian Werner
Patent Examiner
September 10, 2002



**BRIAN WERNER
PATENT EXAMINER
ART UNIT 2621**